



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by Canada Post registered mail on November 24, 2020, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days after they were mailed. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement recorded that this tenancy began on January 15, 2019, as a month-to-month tenancy. Rent in the amount of \$1,050.00 was to be paid by the last day of each month, and the Landlord had been given a \$525.00 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they did not complete a written move-in inspection for this tenancy.

The Landlord testified that the Tenant moved out of the rental unit on October 26, 2020, that they had initially scheduled the move-out inspection with the Tenant for that same day but that when they attended the rental unit for the scheduled time of the inspection, the Tenant had not completed moving out. The Landlord testified that they do not live in the area of the rental unit and had to return home, so they rescheduled the move-out inspection with the Tenant for October 30, 2020.

The Landlord testified that they missed their October 30, 2020 appointment with the Tenant for the move-out inspection due to travel delays. The Landlord testified that the Tenant was leaving the area that day and was unable to reschedule the move-out inspection with the Landlord.

The Landlord testified that they conducted the move-out inspection by themselves on October 31, 2020. The Landlord provided a copy of the move-out inspection into documentary evidence.

The Landlord testified that on October 31, 2020, they found the rental unit uncleared and with garbage inside the unit during the move-out inspection. The Landlord testified that they initially attempted to clean the rental unit themselves but that after two and a half hours of cleaning, they decided to hire a professional cleaner to complete the required cleaning. The Landlord is requesting the recovery of their cleaning costs in the amount of \$230.00 for the professional cleaner and \$57.50 for their time in cleaning the rental unit.

The Landlord testified that they also had to hire a person to remove the garbage from the rental unit and to clean up the yard at the end of this tenancy. The Landlord is requesting the recovery of their garbage removal and yard work cost in the amount of \$6.00 in landfill costs, 57.50 in yard work costs and \$25.00 for a truck rental.

The Landlord submitted four receipts for cleaning, yard work, truck rental and garbage removal into documentary evidence.

Additionally, the Landlord testified that they had allowed the Tenant to use an oak dining set of theirs and that it was severely damaged by the Tenant during this tenancy. The Landlord is requesting \$300.00 in compensation for the damaged dining room set.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the testimony of the Landlord that they did not conduct the move-in inspection for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that the Landlord breached section 23 of the *Act* when they did not complete the required move-in inspection of the rental unit at the beginning of this tenancy as required. Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Pursuant to section 24(2) of the *Act*, I find that the Landlord extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

(2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

I accept the Landlord's undisputed testimony, and I find that this tenancy ended on October 31, 2020, the dated the Landlord conducted the move-out inspection and took back possession of the rental unit. In addition, I also accept the documentary evidence submitted by the Landlord, including the file number for a previous hearing with the Residential Tenancy Branch, in which it was found that the Tenant had provided their forwarding address to the Landlord on November 1, 2020. Accordingly, this Landlord had until November 16, 2020, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security deposit in full to the Tenant, as they had extinguished their right to claim against the deposit for damages caused during this tenancy.

However, in this case, the Landlord did not return the security deposit, as required, but instead made a claim against the deposit for damages even though they had extinguished their right to make this claim when they did not complete the move-in inspection as required by the *Act*.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** *If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act*, the security deposit for this tenancy has double in value to the amount of \$1,050.00.

As for the Landlord claims for their recovery of cleaning, yard work, landfill, and truck costs, in the amount of \$376.00. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the undisputed testimony of the Landlord, supported by the move-out inspection report, and I find that the Tenant returned the rental unit and property at the end of this tenancy in an uncleaned state. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

- 37 (2)** *When a tenant vacates a rental unit, the tenant must*

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned, with garbage left in the unit and with yard work required. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant's breach.

Therefore, I find that the Landlord has established an entitlement to recover their losses due to the rental unit not being cleaned at the end of this tenancy, in the amount of \$376.00, consisting of \$6.00 in landfill fees, \$57.50 in personal labour costs for cleaning, \$230.00 in professional cleaning costs, \$57.50 in yard work costs, and \$25.00 for a truck rental. I grant permission to the Landlord to retain \$376.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

As for the Landlord's claim for \$300.00 in costs to replace an oak dining set, I have reviewed the tenancy agreement for this tenancy, and I find that there is no record of the Landlord and Tenant agreeing to the rental of a dining set in this tenancy. In the absence of evidence to support the Landlord's claim the rental of a dining set had been included in this tenancy agreement, I find that I must dismiss this portion of the Landlord's claim in its entirety.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that the Landlord is entitled to the recovery of their \$100.00 filing fee paid for this application. I grant permission to the Landlord to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

I order the Landlord to return the remaining \$574.00 security deposit they are holding for this tenancy to the Tenant within 15 days of the date they received this decision.

In order to ensure compliance with the above order, I grant the Tenant a **Monetary Order** in the amount of **\$574.00** for the return of their remaining security deposit pursuant to section 38 of the *Act*.

Conclusion

I find that the Landlord breached section 23 of the Act when they failed to conduct the move-in inspection as required for this tenancy.

I find that the Landlord breached section 38 of the Act when they failed to repay the security deposit for this tenancy to the Tenant, as required after they extinguished their right to make a claim against the deposit for this tenancy.

I find that the value of the security deposit paid for this tenancy has doubled in value due to the Landlord's breach of section 38 of the Act.

I grant permission to the Landlord to retain \$476.00 from the security deposit they hold for this tenancy in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$574.00 security deposit they are holding for this tenancy to the Tenant within 15 days of the date they received this decision. I grant the Tenant a **Monetary Order** in the amount of **\$574.00** for the return of their remaining security deposit pursuant to section 38 of the *Act*. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 11, 2021

Residential Tenancy Branch